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Opinion No. 63-90-L
R-292
July 25, 1963

REQUESTED BY: J.C. HOLLOWAY
Director of State Department of Civil Defense

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Are persons who have signed an alleged contract with the Arizona Department of Civil Defense but who are to receive only \$1.00 per year when no national emergency occurs, covered as an employee under A.R.S. §23-901 of the Workman's Compensation Code?

ANSWER: No.

The Arizona Department of Civil Defense currently has contracted for hire approximately thirty persons who have agreed according to a written contract " . . . to spend an average of a minimum of two (2) hours per month working in Civil Defense activities." The Department has contracted to pay the person "the sum of ONE DOLLAR (\$1.00) per year" for his or her services rendered. In the event of a national emergency the person has agreed to " . . . immediately report to the State Department of Civil Defense for full time duty as long as my services are required." During this service in the event of a national emergency, the person's salary will be that established by the State Merit Board. The person signing the contract has the right " . . . to terminate this contract thirty (30) days after submission of written notice to the State Director of Civil Defense."

Under A.R.S. §23-901 (4) (a) employee is defined as:

"(a) Every person in the service of the state, a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment, or contract of hire." (Emphasis supplied)

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The person signing the agreement arguably could come within the category of a person in the service of the state by contract of hire. But, in order to be a contract of hire, the agreement must be binding upon the signer so that if he terminates his employment in violation of the agreement, the State Director of Civil Defense would be legally capable of recovery of compensatory damages from him. When the alleged agreement is examined with this point of compensatory damages in mind, it is readily apparent that the department would be unable to recover any damages since the signer provides for neither a binding promise of consideration nor an executed consideration. The signer is a mere volunteer and has the legal right to participate in the department's activities or to refrain from doing so, at his own whim. The alleged contract is merely an illusory agreement which does not legally bind the signer to any duties. See Corbin on Contracts, Volume 1, § 152, pp. 496-502 (1950).

Our Arizona Supreme Court held in Ferrell v. Industrial Commission of Arizona, 79 Ariz. 278, 288 P.2d 492 (1955) that a volunteer civil defense worker does not come within the coverage of our State Workman's Compensation Law. On the authority of that decision it is the opinion of this office that the signer of the alleged contract is a mere volunteer and, therefore, does not come within the scope of A.R.S. §23-901 and consequently is not entitled to coverage under our state Workman's Compensation Code.

The reference in A.R.S. §26-306(A) to coverage in Workman's Compensation relates to persons working in the State Department of Civil Defense who come within the scope of A.R.S. -23-901. Therefore, there is no conflict between this opinion and this particular statutory provision.


ROBERT W. PICKRELL
The Attorney General

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